IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION (PIL) (LODGING) NO.2490 OF 2004

People for Ethical Treatment of Animals
(PETA) & Anr. ...Petitioners.

Vs.

Union of India & Ors. ...Respondents.

....

Mr. Raj Panjwani for the Petitioners.
Mr. B. A. Desai, Additional Solicitor General, for Respondent Nos.1 and 2.
Mr. K. K. Tated for Respondent No.3.

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CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

August 22, 2005.

ORAL JUDGMENT (PER DR.D. Y. CHANDRACHUD, J.):

People for Ethical Treatment of Animals (PETA) is a non-governmental organisation dedicated, as its name would suggest, to the welfare of animals. One of the fundamental duties embodied in Article 51-A of the Constitution is the duty to protect and improve the natural environment including, inter alia, wild life and to have compassion for living creatures. In exercise of the powers conferred by the provisions of the Prevention of Cruelty to Animals Act, 1960, the Central Government has framed the Performing

Animals (Registration) Rules, 2001. The grievance of the Petitioners is that the mandatory provisions contained in the Rules are observed in breach in the depiction of animals in cinematograph films, including those in the genre of commercial advertising. The reliefs that have been sought in these proceedings under Article 226 of the Constitution include the issuance of appropriate writs or directions commanding: (i) The Union of India to implement the provisions of the Performing Animals (Registration) Rules, 2001; and (ii) The Censor Board of India to obtain a No Objection Certificate from the Animal Welfare Board of India, certifying that the film has been made in compliance with the Rules, before it is certified for public exhibition.

2. In order to consider the issues which arise before this Court in these proceedings, it would be necessary to dwell on the relevant provisions contained in the Performing Animals (Registration) Rules, 2001. These Rules have a statutory character since they have been framed in exercise of the power conferred by Section 38 of the Prevention of Cruelty to Animals Act, 1960. Rule 2(c) defines the expression “film” thus:

> "(c) "film" means a cinematograph film as defined in the Cinematograph Act of 1952 (37 of 1952)."

Rule 2(h) defines the expression "performing animal" in the following terms"

> "(h) "performing animal" means an animal which is used at or for the purpose of any entertainment including a film or an equine event to which the public are admitted." (emphasis supplied).

Rule 3 provides for an application for registration by any person desirous of training or exhibiting a performing animal. Sub-rule (1) of Rule 3 is as follows:

> "(1) Any person desirous of training or exhibiting a performing animal shall, within thirty days from the commencement of these rules, apply for registration to the prescribed authority and shall not exhibit or train any animal as a performing animal without being registered under these rules." (emphasis supplied).

Under the provisions of Rule 7 every owner desirous of hiring out or lending a performing animal in the making of a film has to furnish prior information to the prescribed authority. The prescribed authority is the Animal Welfare Board of India which is established under Section 4 of the Act or an officer authorised by the Board.

Rule 7 is in the following terms:

> "7. Prior information for use of performing animals in films:-
>
> -(1) Every owner desirous of hiring out or lending a performing animal in the making of a film shall give prior information in the format as specified by the prescribed authority for this purpose specifying the kind of animal, age of animal, physical health of the animal, the nature of performance to be done by the animal, the duration for which the animal shall be used for such performance, the duration and method of training of the animal for such performance and justification for the use of such animals in the film and such other information as may be required by that authority.
>
> -(2) Every such application shall be accompanied by a fitness certificate issued by a veterinary doctor certifying the health and fitness of the animal along with a ownership certificate in case of animals covered under the wildlife (Protection) Act, 1972."

Rule 8 prescribes the general conditions for registration which the prescribed authority is empowered to impose. Amongst the conditions, in clause xxiv of sub-rule (1), is the condition that an owner shall inform the prescribed authority at least four weeks in advance, of the place, date and time of the actual making of the film wherein the animal is to be used. A power to inspect is provided for in Rule 14 in the following terms:

> "14. Power to inspect -

> -(1) The prescribed authority may depute an officer or authorise any other person, to inspect the mode of transport, care and upkeep of the animals, or to be present at the time of training or exhibition of the performing animals or during making of a film to ensure that the conditions of registration are being complied with."

A report of the inspection is to be submitted by the officer deputed for inspection. Rule 16 provides that every animal in respect of which registration has been granted under Rule 5 shall be exhibited and trained subject to the conditions of registration and the rules. The prescribed authority is empowered to revoke the registration or to issue such orders or directions as it may consider proper for the welfare of animals, in the event that there is a breach of the rules.

3. The expression "film" is defined by Rule 2(c) with reference to the definition contained in the Cinematograph Act, 1952. The Cinematograph Act defines "cinematograph" in Section 2(c) to include "any apparatus for the representation of moving pictures or series of pictures". A "film" is defined in Section 2(dd) to mean a cinematograph film. Sub-section (2) of Section 5B empowers the Central Government to issue directions setting out

the principles which shall guide the authority competent to grant a certificate under the Act in sanctioning films for public exhibition. Guidelines have accordingly been framed by the Central Government in exercise of the power conferred by Section 5B(2). The guidelines inter alia stipulate that the Board of Film Certification shall ensure that scenes "showing cruelty to or abuse of, animals are not presented needlessly." Under the Cinematograph (Certification) Rules, 1983, an application is provided for submitting a film for certification for public exhibition. Rule 21 lays down the requirement of an application and clause (bb) came to be introduced in sub-rule (3) on 12th November 1997. Under clause (bb), a declaration has to be made in writing by the producer of the film declaring that no cruelty was caused to the animals used during the shooting of the film produced in India. Rule 21 mandates that an application for certification has to be in Form I, IA or as the case may be in Form II or IIA. The forms inter alia require a declaration by the producer as to whether the film is a newsreel or a documentary, or as the case may be, a scientific, educational, feature or advertisement film. The applicant has to specify whether any animal has been used in the shooting of the Film and if so, whether a declaration specified in clause (bb) of

sub-rule (3) of Rule 21 has been filed.

4. The grievance of the Petitioners is that these salutary provisions which were incorporated by the Central Government in its capacity of a rule making authority have remained largely confined to paper and that there should be a careful and diligent enforcement of the rules. Affidavits in reply have been filed in these proceedings on behalf of the Central Board of Film Certification and on behalf of the Animal Welfare Board of India. The position which has been admitted on affidavit before this Court is that CBFC certifies films including all advertisements for public exhibition under the provisions of Section 5B of the Cinematograph Act, 1952 and the guidelines framed thereunder. The certification of all films including advertisements is thus a matter of the stated official requirement of the Censor Board. The definition of the expressions “feature film”, “long film” and of “short film” in clauses (ix), (xi) and (xvi) of Rule 2 of the Cinematograph (Certification) Rules, 1983 support the correctness of the position adopted by the Censor Board. The affidavit of the Censor Board states that while certifying advertisements, it is ensured that all advertisements which contain scenes of cruelty to animals are deleted from the film

in accordance with the Gazette notification dated 26th March 2001 issued by the Ministry of Social Justice and Empowerment and the provisions of clause (bb) of sub-rule (3) of Rule 21. A second affidavit which has been filed on behalf of the Central Board of Certification contains inter alia the following averments:

> "Thus under clause (bb) of Rule 21, a declaration declaring that no cruelty was caused to animals during shooting of the films produced in India and the requirement stipulated in the Performing Animals (Registration) Rules, 2001, have been complied with is taken from every producer while accepting the application for certification."

5. The provisions which have been made in the Performing Animals (Registration) Rules, 2001, must be observed punctiliously. The expression "performing animal" has been defined by words which carry an expansive meaning. A performing animal is an animal which is used at or for the purpose of any entertainment including a film or an equine event to which the public are admitted. The expression "at or for the purpose of" have a broad significance. That significance should not be diluted by a restrictive construction. A person who desires to train or exhibit a performing animal has to apply for registration to the prescribed authority. There is a prohibition on exhibiting or training any animal

as a performing animal without registration. Rule 7 applies in a situation where an owner desires to hire out or lend a performing animal in the making of a film. The owner has to furnish prior information to the prescribed authority. The Animal Welfare Board is a statutory authority constituted under the Act to protect and promote the welfare of animals. The owner must specify the kind of animal, the age, physical health, nature of performance, duration of performance and method of training of the animal. A justification for the use of the animal or of animals in the film has to be supplied together with such other information as may be required by the authority. The prescribed authority has under Rule 14 to inspect the mode of transport, and the care and upkeep of the animals and is empowered to depute a representative to be present at the time of training or exhibition of performing animals or during the making of a film to ensure that the conditions of registration are complied with. These are salutary provisions which have been introduced by the Central Government as a delegate of Parliament in furtherance of the statutory object of preventing cruelty to animals. The manner in which a society treats living beings is reflective, in a fundamental sense, of its culture, compassion and development. Protecting the welfare of animals is

a stated constitutional goal embodied in Article 51A (g) and is a matter of legislative policy under the Prevention of Cruelty to Animals Act, 1960. No individual can assert a claim to act in violation of the mandate of the statute and the Rules which have been framed in exercise of statutory powers. No authority can turn a blind eye to the welfare of animals for the specious reason that the mute do not protest. There is merit in the submission of the Petitioners that there must be a scrupulous adherence to the Performing Animals (Registration) Rules, 2001. The Rules ensure that the welfare of performing animals is observed in the entire process of training or exhibiting such animals including in the making of a film. The mode of transport, the care and upkeep of animals, and the method and duration of exhibition or training are all required to be monitored. Strict compliance with these provisions must be observed and regulated – observance by all those who are subject to regulation, and regulation by all those who are duty bound to regulate without exception. The conditions which the Animal Welfare Board imposes, must take due account of the kind of the animal, the age and physical health of the animal and the justification for the use of an animal in the film. The Certification Rules framed under the Cinematograph Act, 1952

were amended on 12th November 1997, so as to require a declaration by the producer of a film that no cruelty was caused to the animal or to animals used during the shooting of a film. This provision was inserted prior to the notification of the Performing Animals (Registration) Rules, 2001. The Certification Rules framed under the Cinematograph Act, 1952, must be harmonized with the Performing Animals (Registration) Rules, 2001. Both sets of rules are issued by the Central Government in exercise of Parliamentary legislation. The interpretation of the former must be in a manner that would not render the latter ineffective. The Rules of 2001 do not impinge upon the freedom of expression, under Article 19(1)(a) of the Constitution. They merely regulate the the use of performing animals so as to avoid cruelty to animals and ensure their welfare.

6. We are of the view that in order to ensure due observance of the Prevention of Cruelty to Animals Act, 1960, the Performing Animals (Registration) Rules, 2001 and the requirements laid down in the Cinematograph (Certification) Rules, 1983, certain directions are required to be issued in these proceedings. We accordingly issue the following directions:

-(i) Consistent with the provisions that are enunciated in Guideline 2(iii)(c) of the Guidelines framed by the Central Government under sub-section (2) of Section 5B of the Cinematograph Act, 1952 and Rule 21(3)(bb) of the Cinematograph (Certification) Rules, 1983, the Central Board of Film Certification shall hereafter in all cases where an applicant for certification of a film for public exhibition states that an animal has been used in the shooting of a film, require the production of a certificate from the Animal Welfare Board of India certifying that the provisions of the Performing Animals (Registration) Rules, 2001, have been complied with. Such a certificate shall be filed with the application for certification of a film for public exhibition and, in any event, before the film is certified for public exhibition;

-(ii) In view of the affidavit filed by the Animal Welfare Bord of India in these proceedings supporting the submissions urged on behalf of the Petitioners, we direct that the Board shall process all applications for the grant of certificates for certifying compliance with the Performing Animals (Registration) Rules, 2001. This shall be done expeditiously within a period of two weeks of the submission of an application containing all the necessary

particulars or, as the case may be, information as required by the Board;

-(iii) We record the statement made by the Central Board of Film Certification on affidavit in these proceedings that the Board certifies films including all advertisements for public exhibition and that it observes the requirement of seeking a declaration to the effect that no cruelty was caused to animals during the shooting of a film produced in India and that the requirements stipulated in the Performing Animals (Registration) Rules, 2001 have been complied with from every producer while accepting applications for certification; and

-(iv) The Central Board of film certification shall take steps to publish and/or circulate the aforesaid requirements in an appropriate manner to the concerned trade bodies.

7. The petition shall accordingly stand disposed of in these terms. There shall be no order as to costs.

CHIEF JUSTICE.

DR. D. Y. CHANDRACHUD, J.